IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Rajasthan Vidhyut Mazdoor Congress Branch, Mahi Jal Vidhyut Pariyojna, Banswara v. Rajasthan State Electricity Board, Jaipur & Ors.

S.B.CIVIL WRIT PETITION NO.1714/1991
under Article 226 of the Constitution of India.

Date of Order : 5th August, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.P.Choudhary]
Mr. Deepesh Beniwal] for the petitioner.
Mr. R.K.Singhal]
Mr. Ravi Bhansali] for the respondents.

BY THE COURT :

The petitioner, a trade union registered under the Trade Union Act, 1926, preferred the present writ petition espousing the cause of its members named in schedule-A appended with the writ petition with regard to grant of pay scale to them from the date of their initial appointment on the posts the are holding.

The members of the petitioner union named in Schedule-A are working on the post of Vehicle Driver,

Mistri civil, Lab Assistant, Mistri and Tracer under the control of the Superintending Engineer (Generation), Mahi Hidal Project, Banswara.

The members named in Schedule-A entered in the services of the respondents on various dates, all prior to July, 1982. The services of the members of petitioner union stood confirmed by the respondents on the post they were holding under the orders dated 15.1.1988 (Anx.P/5) and the order dated 16.1.1988 (Anx.P.6). By those orders the members of the petitioner union cause of whom is espoused by this writ petition were also allowed regular pay scale i.e. of Rs.925-1800. The grievance of the petitioner union is that the pay scale of the post they are holding was not given to them from the date of their initial appointment. The petitioner union has founded its claim with regard to grant of regular pay scale to its members from the date of their initial appointment on the basis of principle of equal pay for equal work in light of provisions of Article 39(d) read with Article 14 of the Constitution of India. The petitioner union also contended that its members became entitled for grant of regular pay scale at least immediately on completion of two years of service. To substantiate this contention the petitioner union placed on record an order dated 15.1.1988 passed by the Secretary, Rajasthan State Electricity Board, Jaipur. The order dated 15.1.1988 was placed on record by the petitioner

along with an additional affidavit sworn in by Shri Dinesh Kumar Mishra, the Secretary of the petitioner union on 18.3.2002. The copy of the additional affidavit along with copy of the order dated 15.1.1988 was supplied to the respondents on 14.3.2002. The order dated 15.1.1988 reads as under:-

"RAJASTHAN STATE ELECTRICITY BOARD

No.RSEB/Karmik/F.20(2)D.73 Jaipur, 15.1.88

O R D E R

A Screening Committee was constituted vide order No.RSEB/Karmik/F.20(2)D.1806 Dt.26th Sept., 1983 to adjudge the Suitability of workcharged/casual-monthly or daily rated workman in accordance with the criteria and procedure laid down therein. The same committee is hereby further authorised to screen those workcharged/casual-monthly or daily rated workmen who have completed 2 years' continuous services as on 31st March, 1983 or thereafter and are continuing in Board's service, to adjudge there suitability for regularisation and grant of regular Pay Scale as under:-

Classification (period of Service		Date from which regular pay Scale is to be given
(A)	Those who have completed continuous service up to/ as on 31.3.83 and have been continuous in Board's Services thereafter.	1.4.83

(B)	Those who have completed 2 years' continuous service upto/as on 31.3.84 and have been continuing in Board's service thereafter.	1.4.84
(C)	Those who have completed 2 years' continuous service upto/as on 31.3.85 and have been continuing in Board's service thereafter.	1.4.1985
(D)	Those who have completed 2 years' continuous service upto/as on 31.3.86 and have been continuing in Board's service thereafter.	1.4.86
(E)	Those who have completed 2 years' continuous service upto/as on 31.3.87 and have been continuing in Board's service thereafter.	1.4.87

Before adjudging the suitability of these persons the Committee will identify each such workman as to whether these have been engaged against the job of regular/permanent nature or they were recruited only for some temporary jobs required for specific period which may, for one reason or other, have continued beyond the period originally specified. Those who were engaged against the jobs which were of regular/permanent nature, will only be considered for regularisation.

Other conditions laid down in the aforesaid order will be applicable in these case also. This work will be completed within 30 days.

Sd/-
D.C.Jain
Secretary"

(Emphasis supplied)

By order dated 15.1.1988 a Screening Committee constituted under the order dated 16.9.1983 was authorised to screen workcharged/casual/monthly or daily rated workers who have completed two years continuous service as on 31.3.1983 or thereafter and are continuing in Board's service for purposes of their regularisation and grant of regular pay scale. The order dated 15.1.1988 also prescribes that the workers who have completed two years continuous service upto/as on 31.3.1983 shall be entitled for regular pay scale w.e.f. 1.4.1983, the employees who have completed two years continuous service upto 31.3.1984 shall be entitled for regular pay scale w.e.f. 1.4.1984.

It is contended by the counsel for the petitioner that the Screening Committee considered their suitability for the purpose of regularisation of their services and pleased to pass the orders dated 15.1.1988 and 16.1.1988 to regularise their services but the pay scales have not been granted to members of the petitioner union in accordance with the order dated 15.1.1988.

A reply to the writ petition has been filed on behalf of the respondents contending therein that the services of the members of the petitioner union stood regularised in pursuance of the orders dated 15.1.1988 and 16.1.1988, therefore, the regular pay scales were given to them from that date. The respondents also filed an additional affidavit sworn in by Shri R.K.Arora, Personal Officer (Udaipur Circle), Ajmer Vidhyut Vitran Nigam Ltd., Udaipur to the effect that the members of the petitioner union cannot claim regular pay scales prior to their regular appointment. However, nothing has been said by the respondents either in their reply or in the additional affidavit with regard to the order dated 15.1.1988.

However, during the arguments it is contended by counsel for the respondents that the order dated 15.1.1988 stands superseded by the subsequent orders passed by the Board. However, the counsel for the respondents failed to show me any order superseding the order dated 15.1.1988.

Petitioner union filed a rejoinder to the reply mainly emphasizing the facts stated in the writ petition.

I have heard counsel for the parties.

The petitioner union though in main writ petition claimed for regular pay scales to its members whose names appear in schedule-A appended with the writ petition from the date of their initial appointment on the basis of principle of equal pay for equal work but during the arguments confined their claim for grant of regular pay scales in accordance with the order dated 15.1.1988. The order dated 15.1.1988 prescribes for grant of regular pay scale to all workcharged, casual, monthly and daily rated employees who have completed two years continuous service as on 31.3.1983 or thereafter and were continuing in Board's service on 15.1.1988 after adjudging their suitability for regularisation from the dates mentioned in column 2 by their placement according to classification given under column 1 of the table given in the order dated 15.1.1988. The order dated 15.1.1988 creates two rights in favour of the workcharged/casual/monthly or daily rated workmen one is for regularisation of their services and second for grant of regular pay scales from the dates given in the order dated 15.1.1988. The respondents regularised services of the members of the petitioner union by orders dated 15.1.1988 and 16.1.1988 after adjudging their suitability by a competent screening committee but did not allow the regular pay scale from the dates mentioned in column 2 of the order dated 15.1.1988. No just and valid reason is given for not providing the regular pay scales to the members of the

petitioner union by the respondents in their reply or in additional affidavit filed by a competent officer of the respondents Board.

The counsel for the respondents has tried to impress that the Board in its 387th meeting held on 5.6.1989 superseded the order dated 15.1.1988. The decision of the Board taken on 5.6.1989 in its 387th meeting is available on record as Anx.R/9. By the aforesaid decision the Board approved the grant of regular pay scale w.e.f. 1.4.1989 to such workcharged/casual/monthly or daily rated workmen who are found suitable for regularisation by screening committee. The Board by the same decision also decided that the existing workcharged/casual/monthly or daily rated workmen belonging to Scheduled Caste and Scheduled Tribes who have completed 180 days of continuous service after 1.4.1987 may also be allowed regular pay scale subject to being found suitable by screening committee from the date of completion of 180 days or 1.4.1989 whichever is later.

I have thoroughly scanned the decision of the Board taken on 5.6.1989. The decision referred above reads as under:-

> "The Board considered the position as brought out in the agenda note and approved the action taken for screening of work-charged,

> daily rated employees through the Committee constituted vide Board's order No.RSEB/S-3/(525.II)/D.1009 dated 2.3.1989. The Board approved the grant of regular pay scale w.e.f. 1.4.1989 to such work-charged/casual-monthly or daily rated workmen who are found suitable for regularisation by the Screening Committee.
>
> The Board also decided that the existing work-charged casual-monthly or daily rated workmen belonging to SC & ST who have completed 180 days of continuous service after 1.4.1987 may also be allowed regular pay scales, subject to being found suitable by Screening Committee, from the date of completion of 180 days or 1.4.1989 whichever is later."

The said decision no where refers the order dated 15.1.1988, however, it is apparent from reading of the decision that it is in further continuation of the decision of the Board notified under order dated 15.1.1988 as the order dated 15.1.1988 is confined to the workmen who have completed two years continuous service upto/as on 31.3.1987. By decision dated 5.6.1989 the Board in fact extended the benefits provided under the order dated 15.1.1988 to the workmen working on workcharged basis on 5.6.1989 to be fixed in regular pay scale w.e.f. 1.4.1989. By no stretch of imagination the decision of the Board dated 5.6.1989 be taken as a decision superseding the order dated 15.1.1988. The order dated 15.1.1988 is an order

passed by the competent authority and the same is in currency. It creates a valuable right to the workmen with regard to regularisation of their services and also for grant of regular pay scales to them. The respondents though have regularised services of the members of the petitioner union whose names appear in schedule-A but have not given regular pay scales from the dates mentioned in column 2 of the order dated 15.1.1988. I do not find any just and valid reason for not performing the order dated 15.1.1988 in its totality. A right created in favour of workmen by the employer under a competent order is always required to be performed and it cannot be kept non-workable or only a decision for paper value. The respondents are required to give reality to the order dated 15.1.1988 in its true spirit. The respondents are require to allow the regular pay scales to the members of the petitioner union in accordance with the order dated 15.1.1988 by their appropriate placement in the categories mentioned in column 1 in the order dated 15.1.1988.

Accordingly, this writ petition is allowed and the respondents are directed to allow regular pay scales to the members of the petitioner union whose names appear in schedule-A appended with the writ petition in accordance with the order dated 15.1.1988 within a period of three months from today. The members of the petitioner union shall also be entitled

for all consequential benefits including the payment of arrears as a consequence of fixation of their pay and grant of all annual grade increments in the pay scale concerned in accordance with the order dated 15.1.1988.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.